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Bank of America, N.A., successor by merger to  
Countrywide Bank, N.A.*

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

NANCE M. HUTTER,

Plaintiff,

v.

COUNTRYWIDE BANK, N.A., a subsidiary of  
COUNTRYWIDE FINANCIAL  
CORPORATION, WATERMARK CAPITAL,  
INC., EVOLUTION MORTGAGE INC.,

Defendants.

Case No.: 09 CV 10092 (CS)

**ANSWER WITH CROSS CLAIMS**

Bank of America, N.A., successor by merger to defendant Countrywide Bank, N.A. ("BANA") by its attorneys, Zeichner Ellman & Krause LLP, answers the plaintiffs' Third Amended Complaint (the "Complaint"), upon information and belief, as follows:

1. BANA lacks knowledge or information sufficient to form a belief as to the truth of and refers all conclusions of law to the Court concerning all allegations contained in paragraphs 1, 2, 17, 48, 49, 55-56 and 66-68.

2. BANA lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraphs 5, 8, 13, 89-93 and 95-96.

3. BANA lacks knowledge or information sufficient to form a belief as to the truth of and refers the Court to the referenced documents for their contents concerning the allegations in paragraphs 3, 10, 12, 15, 18, 19, 22, 23, 31 and 39.

4. BANA denies each and every allegation in paragraph 11, 14, 16, 20, 21, 29, 34-38, 50-52, 58 and 69-70.

5. BANA denies each and every allegation and refers the Court to the referenced documents for their contents concerning the allegations in paragraphs 4, 25, 30 and 32.

6. BANA denies each and every allegation and refers all conclusions of law to the Court concerning all allegations contained in paragraphs 40-41 and 140.

7. BANA lacks knowledge or information sufficient to form a belief as to the truth of and refers the Court to publicly available information regarding

“mortgage-lending companies” and “subprime lenders” concerning all allegations contained in paragraph 33.

8. BANA refers all conclusions of law to the Court, and denies each and every allegation in paragraph 57 except lacks knowledge or information sufficient to form as a belief as to the truth of the allegations against Watermark Capital Inc. (“Watermark”) and Evolution Mortgage Inc. (“Evolution”).

**FIRST AFFIRMATIVE DEFENSE**

9. BANA did not owe any duties to Plaintiff in connection with the subject loan of this action.

**SECOND AFFIRMATIVE DEFENSE**

10. The cause of action asserted in the Complaint may not be maintained against BANA as it has defenses founded upon documentary evidence.

**THIRD AFFIRMATIVE DEFENSE**

11. Plaintiff’s claims are barred, in whole or in part, because BANA’s conduct at issue was consistent with the express language of Plaintiff’s mortgage and loan documents, or otherwise provided by law.

**FOURTH AFFIRMATIVE DEFENSE**

12. Plaintiff has failed, refused and/or neglected to take reasonable steps to mitigate her damages, including but limited to, Plaintiff's failure to submit a loan modification application and thus reducing or diminishing recovery by her.

**FIFTH AFFIRMATIVE DEFENSE**

13. Plaintiff's claims and/or requested relief are barred, in whole or in part, by her own intentional, negligent or otherwise culpable wrongdoing.

**SIXTH AFFIRMATIVE DEFENSE**

14. Plaintiff's claims are barred by her own conduct from the relief sought, inasmuch as her damages, if any, were caused by her own actions or omissions, or the actions or omissions of third parties with whom she dealt.

**SEVENTH AFFIRMATIVE DEFENSE**

15. Any alleged acts or omissions of BANA that gave rise to the claim of Plaintiff were justified by a legitimate business necessity or other legitimate reason.

**EIGHTH AFFIRMATIVE DEFENSE**

16. Plaintiff's claim is barred by the doctrine of unclean hands.

**NINTH AFFIRMATIVE DEFENSE**

17. Plaintiff's action is barred because she ratified the mortgage agreement.

**TENTH AFFIRMATIVE DEFENSE**

18. BANA provided proper notice to Plaintiff of her right to rescind the mortgage under 12 C.F.R. § 226.23 by providing Plaintiff with two copies of a notice to rescind as required under TILA.

**ELEVENTH AFFIRMATIVE DEFENSE**

19. Plaintiff's GBL 349 claim is contradicted by closing documents.

**TWELFTH AFFIRMATIVE DEFENSE**

20. Plaintiff paid fees to Evolution for work actually performed in connection with the Loan.

**THIRTEENTH AFFIRMATIVE DEFENSE**

21. Plaintiff's payments of fees to Evolution did not violate RESPA.

**FOURTEENTH AFFIRMATIVE DEFENSE**

22. If there were any RESPA violations, such RESPA violations did not proximately cause Plaintiff a loss.

**FIFTEENTH AFFIRMATIVE DEFENSE AND  
FIRST CROSS-CLAIM AGAINST EVOLUTION AND WATERMARK**

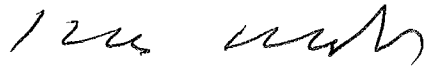
23. Plaintiff alleges misconduct against Evolution and Watermark, including Evolution and Watermark's alleged violations of GBL 349 and Evolution's alleged violations of RESPA.

24. To the extent that Plaintiff obtains judgment against BANA, BANA is entitled to a judgment over and against Evolution and Watermark, based on Evolution and Watermark's culpable conduct.

WHEREFORE, BANA demands judgment dismissing the Complaint, together with the costs and disbursements of this action and on the cross-claim, in the event judgment is entered against BANA, BANA demands judgment against Evolution and Watermark in a like amount; and for such other and further relief as is just and proper

Dated: New York, New York  
December 12, 2011

ZEICHNER ELLMAN & KRAUSE LLP

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\_\_\_\_\_  
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-and-

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**CERTIFICATE OF SERVICE**

STATE OF NEW YORK,  
COUNTY OF NEW YORK

Michael W. Antonivich, under the penalty of perjury declares the following: that I am over the age of eighteen years, and am not a party herein, and reside in Nassau County, New York and that on the 12th day of December, 2011, I served a true copy of the within **DEFENDANT BANK OF AMERICA, N.A.'S ANSWER WITH CROSS CLAIMS** upon the attorneys hereinafter named at the places hereinafter stated by depositing the same, properly enclosed in a post-paid, properly addressed wrapper, into the exclusive care and custody of a depository maintained and controlled by the United States Post Office for delivery by first class mail to said attorneys at their last known addresses given below:

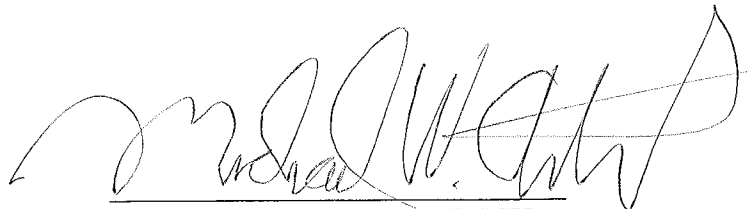
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Dated: December 12, 2011



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